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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

Case No. 75-1039

MARIE BALDASARRO,

Petitioner,

vs.

STATE OF OHIO,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS TENTH APPELLATE DISTRICT, FRANKLIN COUNTY, OHIO

BRIEF FOR RESPONDENT IN OPPOSITION

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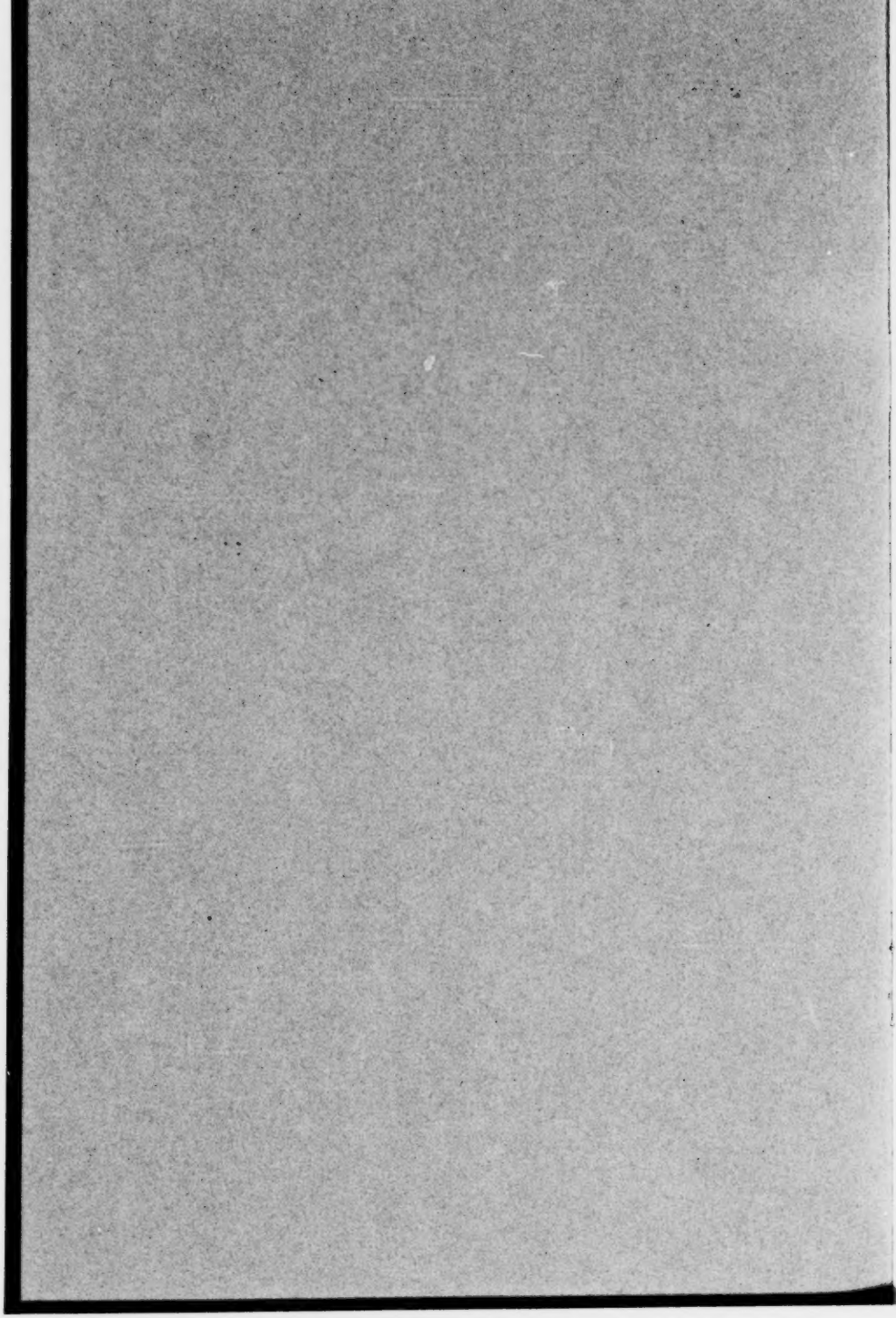

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JURISDICTION

The jurisdictional requisites are adequately set forth in the petition.

QUESTIONS OF LAW PRESENTED

1. WHERE AUTHORITIES PRESENT A MAGISTRATE WITH DETAILED FACTS GIVEN TO THEM BY AN INFORMANT, WHOSE CREDIBILITY HAS BEEN VERIFIED BY POLICE, AND WHERE AUTHORITIES HAVE CONDUCTED A 24-HOUR A DAY INVESTIGATION FOR TWO MONTHS VERIFYING INFORMANT'S STATEMENTS, THAT A CERTAIN INDIVIDUAL IS

CONDUCTING A NUMBERS OPERATION AT HER RESIDENCE, IS THE MAGISTRATE PRESENTED WITH SUFFICIENT FACTS TO ISSUE A SEARCH WARRANT ON PROBABLE CAUSE?

2. WHERE POLICE OFFICERS DO NOT VERIFY A SEARCH WARRANT IN ACCORDANCE WITH RULE 41(d) OF THE OHIO RULES OF CRIMINAL PROCEDURE, DOES THIS TAINT A SEARCH WARRANT THAT OTHERWISE CONFORMS TO THE FOURTH AND FOURTEENTH AMENDMENTS?

STATEMENT OF THE CASE

The statement of the case is adequately set forth in the petition.

ARGUMENT

1. THE COURTS OF OHIO HAVE NOT DECIDED THE FOURTH AMENDMENT ISSUES HERE PRESENTED IN A MANNER INCONSISTENT WITH *AGUILAR* V. *TEXAS* (1964), 378 U. S. 108 AND *SPINELLI* V. *UNITED STATES* (1969), 393 U. S. 410.

The respondent State of Ohio contends that a reading of the affidavit in support of the search warrant shows clearly that the dictates of *Aquilar* v. *Texas* (1964), 378 U. S. 108 and *Spinelli* v. *United States* (1969), 393 U. S. 410 were followed.

The affidavit states that the detailed information was received from a reliable informant who had given factual and reliable information in the past resulting in arrests and convictions for gambling-related offenses in the city of Columbus and the County of Franklin within the past year. This information was not relied upon immediately

to obtain a warrant by authorities; instead, they spent two months verifying this information through surveillance of petitioner. Independent police work also revealed that the individuals that informant stated were operating with petitioner, had been arrested in the past on numbers-related charges. One of the individuals had been convicted on October 11, 1973.

In addition to *Spinelli* and *Aguilar* noted above, respondent also cites in support *Jones* v. *United States* (1960), 362 U. S. 257, and *Draper* v. *United States* (1959), 358 U. S. 307.

2. A QUESTION OF CONSTITUTIONAL DIMENSION DOES NOT ARISE WHERE OFFICERS NEGLECT THE PROCEDURAL REQUIREMENTS OF VERIFICATION OF A SEARCH WARRANT.

Rule 41(d) of the Ohio Rules of Criminal Procedure closely parallels Rule 41 (d) of 18 U. S. C.

The Court of Appeals in the instant case noted that a violation of Rule 41(d) does not impose a per se exclusionary rule. Federal courts have also held this argument without merit. In *United States* v. *McKenzie* (1971), 446 F. 2d 949, at page 954 it is stated:

> "Although important, the procedures required for execution and return of a search warrant, contained in Rule 41(d) of the Federal Rules of Criminal Procedure, are ministerial. Absent a showing of prejudice, irregularities in these procedures do not void an otherwise valid search. See *United States* v. *Haskins*, 345 F. 2d 111 (6th Cir. (1965); *United States* v. *Gross*, 137 F. Supp. 244 (S. D. N. Y. 1956); *United States* v. *Klapholz*, 17 F. R. D. 18 (S. D. N. Y. 1955), aff'd 230 F. 2d 494 (2d Cir. 1956, cert. denied, 351 U. S. 924, 76 S. Ct. 781, 100 L. Ed. 1454 (1956)."

CONCLUSION

Respondent respectfully notes that the within cause presents no question which warrants further review by this Court and that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Alan C. Travis, counsel for Respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certifies that on the ___ day of February, 1976, I served three copies of the foregoing printed Brief in Opposition to Petition for Writ of Certiorari, by mailing a copy in a duly addressed envelope, with first class postage prepaid to Mr. Thomas M. Tyack, 536 South High Street, Columbus, Ohio 43215. I further certify that all parties required to be served have been served.

ALAN C. TRAVIS
Counsel for Respondent

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